

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

DRY CREEK JOINT ELEMENTARY
SCHOOL DISTRICT.

OAH CASE NO. 2010110717

ORDER GRANTING STUDENT'S
MOTION FOR RECONSIDERATION

On December 29, 2010, the undersigned administrative law judge issued an order granting the motion to dismiss certain specific issues by Dry Creek Joint Elementary School District (District). Student did not file an opposition to the motion. On December 30, 2010, Parent on behalf of Student (Student) filed a motion for reconsideration. On December 31, 2010, the District filed an opposition to the motion. Student filed a reply to the District's opposition on January 3, 2011.

APPLICABLE LAW

California Code of Civil Procedure section 473, subdivision (b) provides relief to a party from a judgment or order caused by an attorney's mistake, inadvertence, surprise or neglect because the law favors that disputes be resolved on the merits. (*Arambula v. Union Carbide* (2005) 128 Cal. App. 4th 333, 340.)

DISCUSSION AND ORDER

In Student's motion, his counsel, Steven Wyner, included a declaration which sets forth that he had a family emergency which effectively prevented him from being in the office. That through mistake, he was not aware of the District motion until after the issuance of the order.

In the opposition, the District fails to assert that it would suffer prejudice by permitting a reconsideration of the ruling on its motion to dismiss. Because the length of delay would not prejudice the District and there are legitimate reasons for the inadvertence of counsel, Student's motion for reconsideration is GRANTED and the motion will be reconsidered and a new order issued.

IT IS SO ORDERED.

Dated: January 07, 2011

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings